



Complainant's Exhibit No. 146

Internal DuPont Documents on C8



John R Bowman
11/09/2000 05:04 PM

To: Thomas L Sager/AE/DuPont@DuPont, Martha L Reas/AE/DuPont@DuPont
cc: Bernard J Reilly/AE/DuPont@DuPont
Subject: Lubeck-Dawn Jackson note

In view of the interest the letter is getting I think we need to make more of an effort to get the business to look into what we can do to get the Lubeck community a clean source of water or filter the C-8 out of the water. I spent a good bit of time over the past two days talking to an in house lawyer from Exxon and Chris Gibson from Archer and Greiner about their experience in defending MTBE water contamination suits. They both told me that experience has told them it is less expensive and better to remediate or find clean drinking water for the plaintiffs than fight these suits. I think we are more vulnerable than the MTBE defendants because many states have adopted a drinking water guideline for MTBE and it is not biopersistent. My gut tells me the biopersistence issue will kill us because of an overwhelming public attitude that anything biopersistent is harmful.

We are going to spend millions to defend these lawsuits and have the additional threat of punitive damages hanging over our head. Getting out in front and acting responsibly can undercut and reduce the potential for punitives. Bamie and I have been unsuccessful in even engaging the clients in any meaningful discussion of the subject. Our story is not a good one, we continued to increase our emissions into the river in spite of internal commitments to reduce or eliminate the release of this chemical into the community and the environment because of our concern about the biopersistence of this chemical.

DuPont documents unsealed in lawsuit

Associated Press, 08 May 2004

CHARLESTON, W.Va. - A year before it was sued, a DuPont lawyer warned the chemical giant that it could be found liable in a class-action lawsuit alleging a chemical contaminated drinking water, according to company documents unsealed by the West Virginia Supreme Court.

The court voted 5-0 Thursday to unseal the internal documents, which include a November 2000 memo written by in-house DuPont lawyer John R. Bowman that recommended "getting out in front and acting responsibly (to) undercut and reduce the potential for punitives." The ruling upholds a decision by the trial court judge.

Residents of southeast Ohio and West Virginia claim the plant along the Ohio River contaminated water supplies with a chemical called perfluorooctanoate, also known as C8. They filed a class-action lawsuit in

2001 against DuPont on behalf of up to 50,000 people who live nearby.

DuPont argued that the documents are privileged and should not been unsealed. The company claimed the documents were inadvertently released to lawyers for area residents.

Bowman's memo warned that the company would "spend millions to defend these lawsuits and have the additional threat of punitive damages hanging over our head."

DuPont lawyer Tom Flaherty said the company was disappointed by the ruling.

"The documents in question offered individual opinions that do not represent the opinions of DuPont," Flaherty said in a statement.

"DuPont is confident that the trial will provide an opportunity to rebut the claims and allegations made in this case with the facts and science," he said. "DuPont believes that once a jury hears those facts, they will conclude that C8 at trace levels found in the community does not harm the members of the community or the environment."

Neighbors of DuPont's Washington Works plant south of Parkersburg allege in the lawsuit that the company polluted their water with unsafe levels of C8. The chemical also has been found in water samples in Little Hocking, Ohio.

DuPont has used C8 at the plant for more than 50 years in the production of Teflon.

The lawsuit alleges the company has known for decades that C8 was harmful to humans but concealed that knowledge from the public.

Last week, the company announced that it plans to conduct a \$1 million study of plant employees who work with C8 to determine whether the substance causes any adverse health effects.

Bowman's memo said he and another DuPont lawyer, Bernard J. Reilly, "have been unsuccessful in even engaging (company officials) in any meaningful discussion of the subject."

"Our story is not a good one," Bowman wrote. "We continued to increase our emissions into the river in spite of internal commitments to reduce or eliminate the release of this chemical into the community and the environment because of our concern about the bio-persistence of this chemical."

"My gut tells me the bio-persistence issue will kill us because of an overwhelming public attitude that anything bio-persistent is harmful."

Another document unsealed Thursday, known as the "Win for DuPont" memo, said the company's goals were to "not create (the) impression that DuPont did harm to the environment" and to "keep (the) issue out of press as

much as possible." It also said DuPont needed background research on U.S. District Judge Joseph R. Goodwin, hearing a related case involving a company dump at the time.

The trial is scheduled to start in September.

original article

for more information on the C8 lawsuit against DuPont, see Ohio Citizen Action

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WIN FOR DUPONT

Satisfy DuPont Businesses

Maintain/Improve Credibility with Employees/Community/Regulators
Reach Closure with Tennants

Satisfy DuPont Businesses

- EPA drops Dry Run Issue for lack of risk
- Provide as much separation as possible between Tennant and DuPont
- Low cost (\$) to DuPont
- Non-escalation to other plaintiffs
- Stop litigation prior to trial
- Keep landfill separated from plant

Maintain/Improve Credibility with Employees/Community/Regulators

- Do not create impression that DuPont did harm to environment
- Keep issue out of press as much as possible
- Do not create impression of "caving in"
- Create impression (as much as possible) that Tennant has been treated fairly

Reach Closure with Tennants

- We cannot affect the stakeholders
- Tennant needs to believe DuPont is not "harming" him or his farm
- We need to understand Tennant's "values"
 Our thoughts today on his "values"
 - Tennant wants to farm
 - Doesn't have financial ability to farm
 - Believes Landfill is limiting his ability to farm
 - Father could farm profitably, why cant he?

DuPont Strengths

- Recent modifications to landfill (risk argument that only did modifications when required)
- Science and technology used to manage landfill
- Cattle report conclusions and prior cattle data
- Appearance of landfill
- Video commentary inconsistencies and supports cattle team conclusions
- Small mammal study

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- Community support level (leaders and employees)
- DuPont core values vs. Tennant character issues

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ATTORNEY CLIENT PRIVILEGE ATTORNEY WORK PRODUCT PRIVILEGE

- Lack of support for Tennant
- Aquatic toxicity results

Neutrals

- Permit compliance

DuPont Weaknesses

- Draft EPA Eco Assessment
- Graphic cattle and creek video
- Landfill in the community owned by DuPont
- Black water incident
- Permit exceedances
- It took regulatory action to upgrade landfill
- Perception that deer in the area are ill
- Chemicals in groundwater and stream
- Dry Run runs through Tennant's land
- Drinking water source and characterization of Tennant's
- Letter that says only "non-hazardous" materials will be disposed
- State inspection reports
- WV Supreme Court medical monitoring decision

Potential Derailers

- Event at site or landfill
- RFI process
- GE action
- Bad health report from Tennants' physicians
- Additional plaintiffs
- An analysis that shows chemicals in drinking water
- Can't put to rest "Lease for Life" issue
- Unsuccessful containment of discovery about landfill
- EPA keeps pursuing landfill issue
- Restart landfill groundwater monitoring
- Misalignment of team

What do we need to know

- Billett's wants
- Fill in data gaps on Tennant's (ex. water supply, source)
- Judge Goodwin's background
- New information from video tapes

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- What is GE going to do with report information

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**ATTORNEY CLIENT PRIVILEGE
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- What do we want to know about other plaintiffs (other than Wilbur Tennant) and what they want

ACTION ITEMS FOR BILLOTT MEETING

<u>ISSUE</u>	<u>RESPONSIBILITY*</u>
1. Cattle	Ralph
2. Small mammal	Ralph
3. Blackwater and video explanation	Dawn, Tanya, Rich, Bob
4. Permit violations	Bob
5. Lease	Paula/Joe Gaston

*Paula will prepare initial memorandum setting forth the response to each of the issues. The memorandum will then be reviewed by the above individuals for accuracy, completeness, and further explanations.

RCSO

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Technical note: In response to my inquiry, The Memory Hole received these documents from the Administration Office of the West Virginia Supreme Court of Appeals.

To: Andrew S Harten/AE/DuPont@DuPont
cc:
Subject: Draft Environ PFOA Monograph

----- Forwarded by Isidoros J Zanikos/AE/DuPont on 11/07/2001 01:29 PM -----

From: Bernard J Reilly on 11/07/2001 01:12 PM
To: Timothy S Blingman/AE/DuPont@DuPont, Isidoros J Zanikos/AE/DuPont@DuPont
cc:
Subject: Draft Environ PFOA Monograph

----- Forwarded by Bernard J Reilly/AE/DuPont on 11/07/2001 01:10 PM -----

From: Bernard J Reilly on 11/07/2001 06:55 AM
To: Gerald L Kennedy/AE/DuPont@DuPont, Robert W Rickard/AE/DuPont@DuPont
cc: John R Bowman/AE/DuPont@DuPont, M. Ann Bradley/STB/DUP@DUP, Paula L Dunt/STB/DUP@DUP, Heather H. Jones/STB/DUP@DUP, Andrea V Melnikowski/AE/DuPont@DuPont, Martha L Rees/AE/DuPont@DuPont
Subject: Draft Environ PFOA Monograph

Gerry and Bobby,

Any feedback you have on the attached would be greatly appreciated. Errors and missing studies or data would be of most concern. Data interpretation and judgments that are less conservative than ours of less of a concern. The purpose of this document is help us defend the class action law suit and demonstrate to the regulators that PFOA is not presenting health risks, it is not to displace our CEG process. Let us know if you feel we should not share this with the WVDEP and EPA Region 3 ASAP. As you know Dr Staats has asked repeatedly for it, and now Region 3 is drafting a Safe Drinking Water Act Order to supply alternatives if drinking water levels above some cut-off (which we hope they will share before they issue the order), they also are eager to see this report.

—Bernie

----- Forwarded by Bernard J Reilly/AE/DuPont on 11/07/2001 06:42 AM -----
 Janet Kester <jkester@envirocorp.com> on 11/06/2001 07:40:21 PM



To: John R Bowman/AE/DuPont@DuPont, Bernard J Reilly/AE/DuPont@DuPont
cc: Steve Washburn <SWashburn@envirocorp.com>, Robert Harris <RHarris@envirocorp.com>
Subject: Draft monograph

Hello All,
 Attached please find the draft PFOA monograph in PDF format. Please let me

know if you have trouble accessing it.
Enjoy!
<<PFOA_draft.pdf>>
Thanks,
Janet

 - PFOA_draft.pdf

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